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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,573	03/29/2005	Robert David Black	ROCKCO P69AUS	9147
20210 7590 08/07/2009 DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301			EXAMINER HIJAZ, OMAR F	
			ART UNIT 3633	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/529,573	<b>Applicant(s)</b> BLACK ET AL.	
	<b>Examiner</b> OMAR HIJAZ	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 2, 2009 has been entered.

This communication is a Non-Final rejection Office Action on the merits. Claims 1-8 have been previously cancelled, claims 9-14 have been recently cancelled, claims 15 and 21 have been amended, and claims 22-25 have been newly added. Claims 15-25 are now pending and have been considered below.

### ***Response to Amendment***

The previous drawing objections are withdrawn in light of Applicant's amendments. The previous 112 2<sup>nd</sup> paragraph rejections are withdrawn in light of Applicant's amendment.

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Drawings***

The drawings were received on 02 June 2009. These drawings are acceptable to the examiner.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 15-20 and 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**As per claim 15**, at line 5, the phrase "U-shaped configuration" lacks antecedent basis. The phrase should be "U-shaped member" because the applicant used "first and second U-shaped members" in line 4.

**As per claim 22**, at lines 14-15, the recitation "non-extensible means " lacks antecedent basis.

**As per claim 23**, at lines 2-3, the recitation "the first end of the prop being attachable to the extensible leg telescopic" renders the claim indefinite because it is unclear.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 15-17 and 19-24, as best understood, are rejected under 35**

**U.S.C. 102(b) as being anticipated by Blier (U.S. Patent No. 4,371,057).**

**As per claim 22**, Blier teaches a constructional unit comprising (scaffolding; abstract): a support frame (figure 1) which is O-shaped in plan bounding an open central region (as illustrated, the support frame has a generally O-shaped shape with an open region; figure 1A), the support frame including first and second members which are each U-shaped in plan (as illustrated, the support device has first and second U-shaped members; figure 1A below), each of the first and the second members being in the form of a base frame (as illustrated, each of the first and second members has a base frame; figure 1A below) from which extend two side arms (as illustrated, the first member has a pair of spaced apart arms, and the second member has a pair of spaced apart arms; figure 1A below) and an open end of each of the first and the second U-shaped members facing one another (the members are facing one another; figure 1A below); the first and the second members each having their side arms telescopically engaged to define sides to the open central region of the O-shaped support frame (telescopic; abstract; as illustrated, the first arms are telescopically received within the pair of side arms of the second member; figure 1A below); the telescopic engagement

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providing for the spacing of the first base frame from the second base frame to be adjustable over a range of distances (the members are telescopic, therefore the members are adjustable over a range of distances) and for the temporary securing of the first member to the second member at a predetermined spacing (a lock bolt 25 may be used to secure the supports at the desired location to vary the total length; col. 3, lines 6-13); the base frame of the first member being provided with non-extensible means (the members are telescopic, therefore although one of the members may be extensible, the fixed portion of the member is non-extensible) whereby the base frame is located at a first level at a first working location (figure 1A below); the second member being adapted for location at a second working location off-set from the first working location, by means of at least one extensible leg (12") (as illustrated, the location of the first member is offset from the location of the second member; figure 4), the, or each, extensible leg being pivotally attached at or near one end of the leg to the base frame of the second member or to a side arm thereof (the pair of legs to be secured vertically or at a desired inclined angle; col. 2, lines 58-60); the opposite end to the one end of the, or each, extensible leg being adapted for location vertically below the first level (as illustrated, the opposite end of the legs 12/14 may be located at different levels; figure 4).

**As per claim 23**, Blier teaches the, or each, extensible leg is provided with a prop (14) with first and second ends (figure 4), the first end of the prop being attachable to the extensible leg, the second end of the prop being attachable to the second member (as illustrated, the member 14 is attached to both the leg 12 and the second

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member; see figures 4 and 1A below), the prop in use providing for a fixed angular alignment of the leg relative to the second member (the pair of legs to be secured vertically or at a desired inclined angle; col. 2, lines 58-60).

**As per claim 24**, Blier teaches a platform member (41) is provided to which, in a first working configuration, serves to cover the open central region of the support frame (as illustrated, the platform 41 is covering the open central region; figure 4) so as to prevent the inadvertent passage of an article or person through the open central region (this would prevent passage of articles) and a second working configuration wherein the platform member is withdrawn to allow access through the open central region (when the platform is removed, the open region would be capable of allowing for the passage of articles or persons).

**As per claim 15**, Blier teaches an access unit for covering an opening in an upper floor (scaffolding; abstract), the access unit comprising: a support frame (figure 1A) having a generally O-shaped configuration with an open central region (as illustrated, the support frame has a generally O-shaped shape with an open region; figure 1A), the support frame including U-shaped first and second members (as illustrated, the support device has first and second U-shaped members; figure 1A below) with an open end of each U-shaped configuration facing one another (the members are facing one another; figure 1A below), each of the first and second members comprises a base frame defining one end of the open central region (as illustrated, each of the first and second members has a base frame which define one end of the open central region; figure 1A below), and a pair of spaced apart side arms

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(as illustrated, the first member has a pair of spaced apart arms, and the second member has a pair of spaced apart arms; figure 1A below) extending parallel to one another from opposite ends of the base frame (as illustrated, the arms are parallel and on opposite sides of the base frame; figure 1A below); the pair of side arms of the first member being telescopically received within the pair of side arms of the second member, to facilitate adjustment of a length of the open central region (telescopic; abstract; as illustrated, the first arms are telescopically received within the pair of side arms of the second member; figure 1A below) and the open central region (as illustrated, the scaffold has an open central region; figure 1A below) defined by a base frame and the pair of spaced apart side arms of the second member, being completely unobstructed and open without anything being located between the base frames for the first and second members (as illustrated, the area between the side arms and the base frame of the scaffold is completely unobstructed; figure 1A) so as to allow unhindered passage of a person through the open central region (it is obvious that this would allow for passage of a person through the central region); and the telescopic adjustment of the pair of spaced apart side arms facilitates desired spacing of the base frame of the first member from the base frame of the second member over a range of distances (the members are telescopic, therefore the members are adjustable over a range of distances); and each of the spaced apart side arms of the second member having a clamp for temporary securing of the side arms of the first member to the side arms of the second member at a pre-determined relationship and maintaining the desired spacing of the base frame of the first member from the base frame of the second



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member (a lock bolt 25 may be used to secure the supports at the desired location to vary the total length; col. 3, lines 6-13);

the second member having a pair of spaced apart props (legs 12/14) which are pivotably attached (the pair of legs to be secured vertically or at a desired inclined angle; col. 2, lines 58-60) adjacent the base frame of the second member for supporting the second member at a desired level (as illustrated, the height of the base frame of the second member can be adjusted to the desired level; figure 4);

the base frame of the first member being adapted for position at a first location (as illustrated, the first member base frame is positioned at a first location; figure 4);

and the pair of spaced apart adjustable props facilitate positioning of the base frame of the second member at substantially a same level as the base frame of the first member (as illustrated, the base frame of the first and second members are level; figure 1A below) so as to position the support frame of the access unit within a stairwell in a substantially horizontal orientation (as illustrated, the support device is in a stairwell and provides a horizontal orientation; figure 4); the base frame of the first member has a flange for overlying a support surface at the first location to facilitate retaining the base frame of the first member at the first location (the base frame members are made of two back to back angle members whose flange portion is capable of overlying a stair).

**As per claim 16**, Blier discloses a length of each adjustable prop is variable (as illustrated, the legs 12/14 are adjustable; figure 4) to facilitate maintaining the access unit in one of a horizontal orientation and at a desired angle relative to horizontal (as

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illustrated, the support device is in a stairwell and provides a horizontal orientation; figure 4; desired angles are capable of being attained).

**As per claim 17**, Blier discloses a removable platform member (41) for covering the open central region, when the platform member is in a first working position (as illustrated, the platform 41 is covering the open central region; figure 4), and preventing passage of one of the person and an article located above the support unit from inadvertently passing through the open central region (this would prevent passage of articles); and the platform member, when the platform member is in a second position removed from the open central region, allowing unimpeded passage of at least one of the person and the article through the open central region (when the platform is removed, the open region would be capable of allowing for the passage of articles or persons).

**As per claim 19**, Blier teaches a length of each of the pair of spaced apart side arms of the first member is greater than a length of the base of the frame of the first member (as illustrated, the arms of the first member are telescopic and extended out to a length greater than the length of the base frame of the first member; figure 1A below).

**As per claim 20**, Blier teaches a space between the base frame of the first member and the base frame of the second member is completely unobstructed (as illustrated, the area between the side arms and the base frame of the scaffold is completely unobstructed; figure 1; as illustrated, the scaffold has an open central region; figure 1A below), a space between the opposed legs of the first member is completely unobstructed (as illustrated, the space between all of the opposed legs of the scaffold

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are unobstructed; figure 1A below), and the space between the opposed legs of the second member is completely unobstructed (as illustrated, the space between all of the opposed legs of the scaffold are unobstructed; figure 1A below).

**As per claim 21**, Blier teaches an access unit for covering an opening in an upper floor (scaffolding; abstract), the access unit comprising: a support frame (figure 1A) having a generally oval configuration with a completely unobstructed open central region (as illustrated, the support frame has a general oval shape with an unobstructed open region; figure 1A), the support frame including U-shaped first and second members (as illustrated, the support device has first and second U-shaped members; figure 1A below) with an open end of each U-shaped configuration facing one another (figure 1A below), each of the first and second members comprises a base frame defining one end of the open central region (as illustrated, each of the first and second members has a base frame which define one end of the open central region; figure 1A below), and a pair of spaced apart side arms (as illustrated, the first member has a pair of spaced apart arms, and the second member has a pair of spaced apart arms; figure 1A below) extending parallel to one another from opposite ends of the base frame (as illustrated, the arms are parallel and on opposite sides of the base frame; figure 1A below); the pair of side arms of the first member being telescopically received within the pair of side arms of the second member, to facilitate adjustment of a length of the open central region (telescopic; abstract; as illustrated, the first arms are telescopically received within the pair of side arms of the second member; figure 1A below) and the open central region (as illustrated, the scaffold has an open central region; figure 1A

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below) defined by a base frame and the pair of spaced apart side arms of the second member, being completely unobstructed and open without anything being located between the opposed legs of the first and second members (as illustrated, the space between all of the opposed legs of the scaffold are unobstructed; figure 1A below) and without anything being located between the base frames for the first and second members (as illustrated, the area between the side arms and the base frame of the scaffold is completely unobstructed; figure 1A) so as to allow unhindered passage of a person through the open central region (it is obvious that this would allow for passage of a person through the central region); and the telescopic adjustment of the pair of spaced apart side arms facilitates desired spacing of the base frame of the first member from the base frame of the second member over a range of distances (the members are telescopic, therefore the members are adjustable over a range of distances); and each of the spaced apart side arms of the second member having a clamp for temporary securing of the side arms of the first member to the side arms of the second member at a pre-determined relationship and maintaining the desired spacing of the base frame of the first member from the base frame of the second member (a lock bolt 25 may be used to secure the supports at the desired location to vary the total length; col. 3, lines 6-13);

the base frame of the first member has a flange for overlying a support surface at the first location to facilitate retaining the base frame of the first member at the first location (the base frame members are made of two back to back angle members whose flange portion is capable of overlying a stair)

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the second member having a pair of spaced apart props (legs 12/14) which are pivotably attached (the pair of legs to be secured vertically or at a desired inclined angle; col. 2, lines 58-60) adjacent the base frame of the second member for supporting the second member at a desired level (as illustrated, the height of the base frame of the second member can be adjusted to the desired level; figure 4);

the pair of spaced apart adjustable props facilitate positioning of the base frame of the second member within a stairwell in a substantially horizontal orientation relative to the upper floor (as illustrated, the support device is in a stairwell and provides a horizontal orientation; figure 4);

a brace connects each of the adjustable props with one of the side arms of the second member (as illustrated, a brace (26) connects the adjustable legs 12/14 with the arm of the second member; figure 1A below);

a removable platform member (41) for overlying the upper floor and (as illustrated, the platform lies over the upper floor; figure 4) and covering both the opening and the open central region, when the platform member is in a first working position (as illustrated, the platform 41 is covering an opening above the stairwell and the open central region; figure 4), and preventing passage of one of the person and an article located above the support unit from inadvertently passing through the open central region (this would prevent passage of articles); and the platform member, when the platform member is in a second position removed from the open central region, allowing unimpeded passage of at least one of the person and the article through the open central region (when the platform is removed, the open region would be capable of

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allowing for the passage of articles or persons).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 18 and 25, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Blier (U.S. Patent No. 4,371,057) in view of Testu (FR Patent No. 2,663,075).**

**As per claim 18**, Blier fails to disclose the platform member is at least in part of open construction to enable viewing through the open central region when the platform member is in the first working position.

Testu discloses a horizontal stairwell scaffolding with a covering lock lattice whereby the lock lattice is constructed out of metallic lattice (page 5, line 2 of translated document) it is therefore understood that such a material is capable of being viewed through.

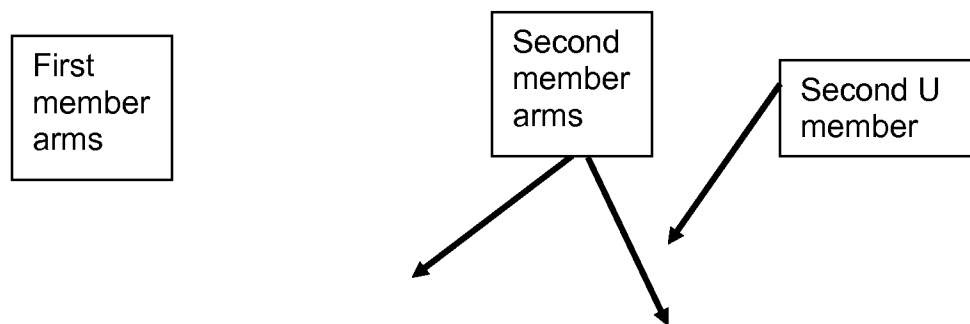
Therefore from the teaching of Testu, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the telescopic scaffolding of Blier to include a lattice platform as taught by Testu in order to allow viewing through the platform.

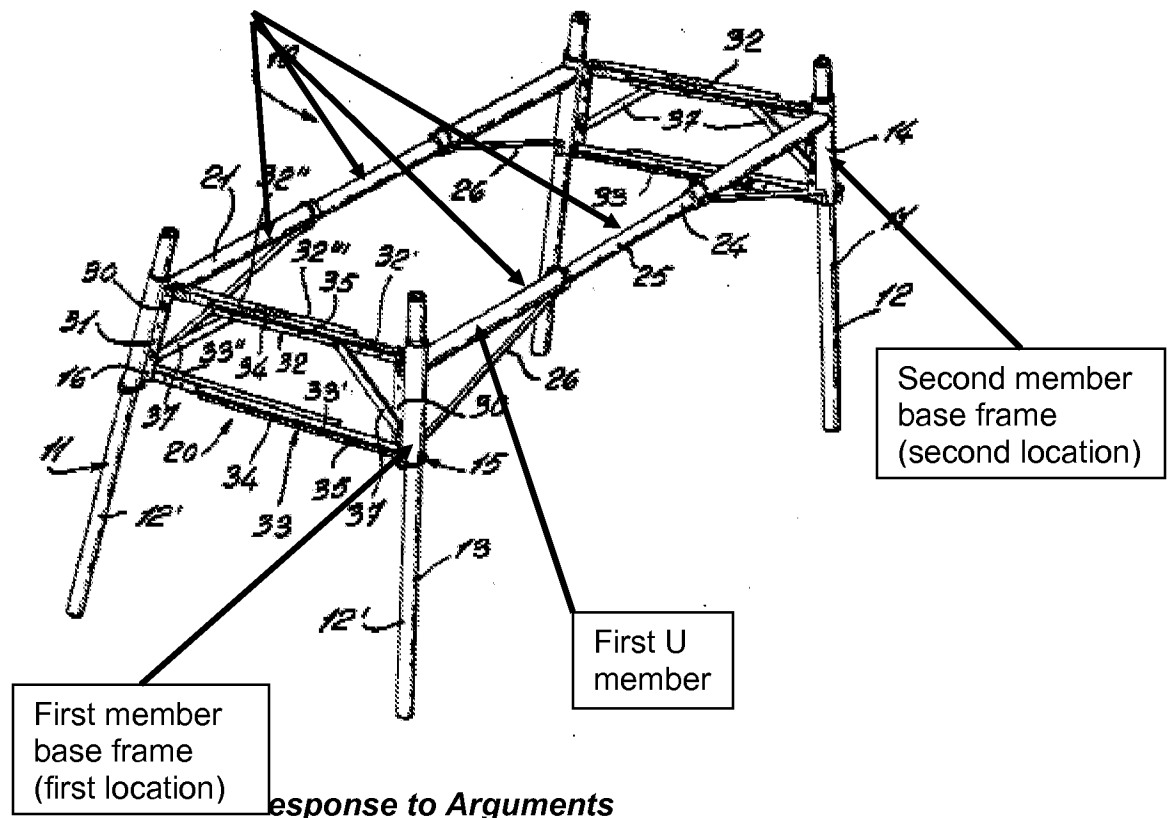
**As per claim 25**, Blier fails to disclose the platform member is, at least in part, of openwork construction to enable a view to be obtained through the open central region, when the platform member is in the first working configuration.

Testu discloses a horizontal stairwell scaffolding with a covering lock lattice whereby the lock lattice is constructed out of metallic lattice (page 5, line 2 of translated document) it is therefore understood that such a material is capable of being viewed through.

Therefore from the teaching of Testu, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the telescopic scaffolding of Blier to include a lattice platform as taught by Testu in order to allow viewing through the platform.

**Figure 1A**





Applicant's amendments and new claims have been considered but are moot in view of the new ground(s) of rejection. Applicant argues that Testu reference does not show an open central region since there is a T-shaped element running through the center. However Testu has been removed as the primary reference in place of Blier which does show a completely open central region. In addition, applicant argues that Testu does not disclose U-shaped first and second members with an open end facing one another, however this is clearly taught by the U-shaped members of Blier.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR HIJAZ whose telephone number is (571)270-



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5790. The examiner can normally be reached on Mon-Fri 9:30 a.m. - 7:00 p.m.  
(alternating Fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571)272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ OFH/  
Omar F. Hijaz  
Examiner, Art Unit 3633

/Gay Ann Spahn/  
Gay Ann Spahn, Primary Examiner  
August 5, 2009